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DE RUEHCI #0039/01 0370940
ZNR UUUUU ZZH
P 060940Z FEB 07
FM AMCONSUL KOLKATA
TO RUEHC/SECSTATE WASHDC PRIORITY 1381
INFO RUEHBI/AMCONSUL MUMBAI 0535
RUEHCG/AMCONSUL CHENNAI 0541
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 1275
RUEHKA/AMEMBASSY DHAKA 0334
RUEHKT/AMEMBASSY KATHMANDU 0333
RUCNDT/USMISSION USUN NEW YORK 0024
RUEHGV/USMISSION GENEVA 0030
RHEHAAA/NSC WASHINGTON DC
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RUEHPW/AMCONSUL PESHAWAR 0078
RUEHKP/AMCONSUL KARACHI 0101
RUEHLH/AMCONSUL LAHORE 0104
RUEHLM/AMEMBASSY COLOMBO 0141
RUEHCI/AMCONSUL KOLKATA 1704

UNCLAS SECTION 01 OF 03 KOLKATA 000039

SIPDIS

SENSITIVE
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DEPT FOR G/TIP, DRL, SCA/INS
DEPT OF LABOR FOR ILAB

E.O. 12958: N/A

TAGS: [PGOV PHUM SOCI PINR IN](#)

SUBJECT: USG SUPPORT FOR ANTI-TRAFFICKING EFFORTS STRONG,
PROSECUTIONS REMAIN ELUSIVE

¶1. (U) Summary: On January 18, DCM visited anti-trafficking non-governmental organization (NGO) Apne Aap's shelter at Topsia, located in a Muslim neighborhood that is one of Kolkata's poorest slums. DCM interacted with Apne Aap leaders and spoke with Deputy Public Prosecutor Taj Mohammed about the establishment of a new legal cell at the Topsia shelter. The creation of the legal cell, which will function both as a legal clinic and as a repository of information related to trafficking, violence against women, and child labor, demonstrates that there is ongoing and increasing cooperation between the Government of West Bengal (GOWB) and NGOs. The visit of the G/TIP program officer and the INL Director provided a follow-on opportunity to discuss law enforcement related trafficking in persons (TIP) issues. Difficulties in building cases under the Immoral Trafficking Prevention Act (ITPA) remain an obstacle to real progress, as stakeholders search for a solution to get around legal uncertainty, institutional corruption, and limited resources. End Summary.

DCM Highlights USG Efforts

¶2. (U) On January 18 DCM visited a shelter run by national NGO Apne Aap for women and children victims of trafficking and violence. The shelter, located in one of Kolkata's poorest Muslim neighborhoods, recently established a legal cell - a place for women to receive legal support, victim's assistance, and information about their legal rights. Apne Aap's Executive Director, Ruchira Gupta, flew from New Delhi to give the DCM a tour of the shelter, where he interacted with children attending classes in reading and writing. (Note: Gupta won an Emmy for investigative journalism for the documentary on trafficking in persons "The Selling of Innocents" and has testified about human trafficking before the U.S. Senate. End Note.) Deputy Director of Prosecution in Kolkata Taj Mohammed provided DCM an overview of the new legal cell, which is being staffed by volunteer attorneys and law students from the National University of Juridical Sciences. At a press conference from the rooftop of

the shelter (which was covered by four television channels, including Doordarshan with an estimated total viewership of 5 million), DCM emphasized the commitment of the multi-agency USG effort to combat sex trafficking, underlined the need for Indian institutions to tackle this menace, and highlighted the USG supported projects in India, including the USD 363,486 grant to Apne Aap, and the USG-funded USD 2.5 million UNODC anti-trafficking project that began in 2006.

Cases Languishing Because of Laws?

13. (U) On the heels of the DCM's visit to Apne Aap, G/TIP Program Officer Gayatri Patel and Embassy INL Director Duke Lokka visited Kolkata from January 30-31 to assess progress on anti-trafficking initiatives. The majority of meetings in Kolkata focused on aspects of law enforcement efforts relating to TIP and child labor. Patel, Lokka and Poloff met first with the International Justice Mission (IJM) Director Donald Hughes and his staff. In April and May of 2006, IJM had worked two sting operations that netted 14 suspected traffickers, and rescued 9 minor girls. Prosecution of the suspects continues, with no indication of an immediate verdict. When we asked about the use of ITPA vis-a-vis the IPC, Hughes stressed that the primary benefit of the ITPA is that the offenses under it are non-bailable and that the suspects cannot flee to avoid prosecution. In addition, the burden of proof shifts to the accused for some elements of the crime. IJM offered some suggestions to improve TIP law enforcement:

-- Suspects need to remain incarcerated to "push" cases forward;

-- Police failure to file charge sheets within the 60-day window results in defendants being released on bail and

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"disappearing;"

Hughes commented that Kolkata Police are only willing to bring cases involving minor children. He believed the police are unwilling to tackle brothel owners or facilitators of prostitution.

14. (U) Poloff and Lokka later met with Deputy Commissioner of the Detective Department Gyanwant Singh. Singh's office is in charge of anti-TIP efforts in Kolkata. Singh painted a positive picture of the TIP situation, claiming that NGO activism, media coverage, and awareness campaigns were having a positive effect because "more individuals from rural areas are coming forward." (Note: We have not yet been able to substantiate this claim, as data is unavailable even when requested. End note.)

15. (U) Singh was less sanguine about the judicial process, however. The reality, he said, is that there won't be any "custody trials" -- cases where a defendant is incarcerated at the time of his trial -- because all defendants will get bail in trafficking cases. When asked why cases were not being brought under the ITPA, he bluntly noted that ITPA's requirement of an inspector-level officer to investigate a case brought under that law made charges under ITPA unlikely. In some large swaths of West Bengal, for example, there is only one inspector-level officer. Given police resources and staffing, Singh felt that charges under the Indian Penal Code were the only real alternative. (Note: In a previous meeting with Poloff at an official function, Singh also said that local judges were not really familiar with ITPA cases, and that cases progressed faster when charges such as rape and kidnapping were utilized. End Note.)

16. (U) Patel, Lokka and Poloff also had an opportunity to interact with local judges. Justice Samaresh Banerjee, who is now on the state human rights commission, put the number of women trafficked in India between 50,000-200,000. While commending the UNODC project in W. Bengal to train prosecutors

in conjunction with the National University of Juridical Sciences, Banerjee felt that negative public perceptions remained an impediment, and that the police need proper training in interrogations. Banerjee also felt that ITPA was generally ineffective. (Note: Banerjee is actively involved in the eastern region planning group that is preparing recommendations for the national action plan on trafficking in persons. Poloff recently attended their two-day meeting and will report on this subject Septel. End note.) Banerjee, like Gyanwant Singh, stressed that sub-inspectors needed to have the authority to investigate ITPA cases. In his view, this would merge ITPA and IPC more effectively. Banerjee further wished for separation between the investigating agency and the law enforcement agency handling a case.

17. (U) Advocates at the Daywalka Foundation explained the judicial bottleneck and the "fast-track" court process. Judges segregate some cases, mostly serious cases involving murder, rape, and grievous bodily hurt, into the fast-track courts. Trafficking cases, if brought under the IPC, can be put into the fast-track court in this manner. Labor cases, including child labor cases, are heard before the labor court.

Getting the Girls Back Home

18. (U) A visit to Sanlaap offered a view of the difficulties in repatriating trafficked victims from other countries. Referring to six girls who were to be repatriated to Bangladesh the following day, Sanlaap Founder and Director Indrani Sinha said it had taken 18 months to get the necessary paperwork and permission from the GOB. Sanlaap and other NGOs that conduct repatriation work with partner NGOs in Bangladesh to locate family, obtain a power of attorney and coordinate with the

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Bangladeshi Rifles, the GOB counterpart to India's Border Security Force. The repatriations are usually emotional, drawn out affairs, as some girls find it difficult to leave. UNICEF program officer Francisco d'Ovidio advised that UNICEF is working on a bilateral agreement between India and Bangladesh on repatriation. A meeting between the Ministry for Women and Child Development and Ministry of Labor and their Bangladeshi counterparts is tentatively scheduled for March. Regarding the police, it was Sinha's belief that officers below the level of Inspector had the capacity to do good work in the field, but were limited by the higher level officers.

Comment

19. (U) Years of sensitivity and awareness training has put TIP onto the West Bengal government agenda, and the government seems to recognize the important role that civil society groups play in combating TIP. Legal issues appear to be creating obstacles for successful prosecution of traffickers, however. Law enforcement and the judiciary are finding ITPA and its amendments difficult to work with. In particular, ITPA sets investigative responsibility of trafficking cases at a high-level within the police hierarchy. In areas outside the major metropolitan zones, the manpower and resources often do not exist for such senior-level investigations. As a result, authorities continue to rely on the IPC to bring trafficking cases. Institutional corruption, a lengthy judicial process, and a fledgling victim's assistance/witness protection regime compound the difficulties in actually securing convictions. In addition, it remains very difficult to obtain non-hearsay data about arrests, charges, and convictions, and the information provided does not differentiate between cases under the ITPA and the IPC. Special courts for trafficking cases and expanded police power to investigate cases may help address these resource and conflict of laws problems. The GOI's stepped-up anti-TIP efforts over the past year reflect a heightened awareness of the need to combat trafficking.

¶10. G/TIP Program Officer Gayatri Patel did not clear on this cable.
JARDINE